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9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2006-25

13 BRIAN JAMES BRELJE
1590 South Coast Highway, Suite 16
14 Laguna Beach, CA 92651

**DEFAULT DECISION
AND ORDER**

15 Certified Public Accountant Certificate No.
27696

[Gov. Code, §11520]

16 Respondent.
17

18 FINDINGS OF FACT

19 1. On or about July 13, 2006, Complainant Carol Sigmann, in her official
20 capacity as the Executive Officer of the California Board of Accountancy, filed Accusation No.
21 AC-2006-25 against Respondent BRIAN JAMES BRELJE ("Respondent") before the California
22 Board of Accountancy.

23 2. On or about June 1, 1979, the California Board of Accountancy ("Board")
24 issued Certified Public Accountant Certificate No. 27696 to Respondent. The Certified Public
25 Accountant Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on March 31, 2007, unless renewed.

27 3. On or about July 26, 2006, Mona S. Sebastian, an employee of the
28 Department of Justice, served by Certified and First Class Mail a copy of Accusation

1 No. AC-2006-25, Statement to Respondent, Notice of Defense, Request for Discovery, and
2 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record
3 with the Board, which was and is 1590 South Coast Highway, Suite 16, Laguna Beach, CA
4 92651. A copy of the Accusation, the related documents, and Declaration of Service are
5 attached as Exhibit "A," and are incorporated herein by reference.

6 4. Service of the Accusation was effective as a matter of law under the
7 provisions of Government Code section 11505, subdivision (c).

8 5. On or about July 31, 2006, the Domestic Return Receipt from the
9 Accusation packet mailed by certified mail was returned to the Office of the Attorney General.
10 The receipt bears the signature of "Michelle Burnside." The receipt is attached to the Declaration
11 of Service, attached as Exhibit "A."

12 6. Government Code section 11506 states, in pertinent part:

13 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
14 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
15 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
16 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

17 7. Respondent failed to file a Notice of Defense within 15 days after service
18 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
19 Accusation No. AC-2006-25.

20 8. California Government Code section 11520 states, in pertinent part:

21 "(a) If the respondent either fails to file a notice of defense or to appear at the
22 hearing, the agency may take action based upon the respondent's express admissions or
23 upon other evidence and affidavits may be used as evidence without any notice to
24 respondent."

25 9. Pursuant to its authority under Government Code section 11520, the
26 California Board of Accountancy finds Respondent is in default. The Board will take action
27 without further hearing and, based on Respondent's express admissions by way of default and the
28 evidence before it, contained in Exhibit A, finds that the allegations in Accusation No.

1 AC-2006-25 are true.

2 10. The total costs for investigation and enforcement are \$6556.97 as of
3 September 7, 2006.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Brian James Brelje
6 has subjected his Certified Public Accountant Certificate No. 27696 to discipline.

7 2. A copy of the Accusation and the related documents and Declaration of
8 Service are attached.

9 3. The agency has jurisdiction to adjudicate this case by default.

10 4. The California Board of Accountancy is authorized to revoke Respondent's
11 Certified Public Accountant Certificate based upon the following violations alleged in the
12 Accusation:

13 a. Business and Professions Code section 5100(c) - dishonesty,
14 fraud, gross negligence or repeated negligent acts;

15 b. Business and Professions Code section 5100(g) - willful violation
16 of the California Accountancy Act or rule or regulation of the Board of Accountancy;

17 c. Business and Professions Code section 5100(i) - breach of
18 fiduciary responsibility;

19 d. Business and Professions Code section 5037 and California Code
20 of Regulations, Title 16, Section 68 - unlawful retention of client records; and

21 e. California Code of Regulations, Title 16, Section 52 - failure to
22 respond to Board inquiry.

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1 ORDER

2 IT IS SO ORDERED that Certified Public Accountant Certificate No. 27696,
3 heretofore issued to Respondent Brian James Brelje is revoked.

4 Pursuant to Government Code section 11520, subdivision (c), Respondent may
5 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
6 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
7 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
8 statute.

9 This Decision shall become effective on January 7, 2007.

10 It is so ORDERED December 8, 2006

11
12 
13 FOR THE CALIFORNIA BOARD OF ACCOUNTANCY

14
15 70067977.wpd

16 DOJ docket number:SD2006801066

17 Attachments:

18 Exhibit A: Accusation No. AC-2006-25, Related Documents, and Declaration of Service
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Exhibit A

Accusation No. AC-2006-25,
Related Documents and Declaration of Service

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**BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2006-25

BRIAN JAMES BRELJE
1590 South Coast Highway, Suite 16
Laguna Beach, CA 92651

A C C U S A T I O N

Certified Public Accountant Certificate No.
27696

Respondent.

Complainant alleges:

PARTIES

1. Carol Sigmann ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Accountancy.
2. On or about June 1, 1979, the Board of Accountancy ("Board") issued Certified Public Accountant Certificate Number 27696 to BRIAN JAMES BRELJE ("Respondent"). The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2007, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Accountancy, under the authority of the following laws. All section references are to the Business and Professions Code

1 unless otherwise indicated.

2 4. Section 5100 states in pertinent part:

3 "After notice and hearing the board may revoke, suspend, or refuse to renew any
4 permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5
5 (commencing with Section 5080), or may censure the holder of that permit or certificate for
6 unprofessional conduct that includes, but is not limited to, one or any combination of the
7 following causes:

8 "

9 "(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in
10 the same or different engagements, for the same or different clients, or any combination of
11 engagements or clients, each resulting in a violation of applicable professional standards that
12 indicate a lack of competency in the practice of public accountancy or in the performance of the
13 bookkeeping operations described in Section 5052.

14 "

15 "(g) Willful violation of this chapter or any rule or regulation promulgated by the
16 board under the authority granted under this chapter.

17 "

18 "(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

19 " "

20 5. Section 5037 states in pertinent part:

21 "

22 "(b) A licensee shall furnish to his or her client or former client, upon request and
23 reasonable notice:

24 "(1) A copy of the licensee's working papers, to the extent that those working
25 papers include records that would ordinarily constitute part of the client's records and are not
26 otherwise available to the client.

27 "(2) Any accounting or other records belonging to, or obtained from or on behalf
28 of, the client which the licensee removed from the client's premises or received for the client's

1 account. The licensee may make and retain copies of documents of the client when they form the
2 basis for work done by him or her."

3 6. Section 5107(a) of the Code states:

4 "The executive officer of the board may request the administrative law judge, as
5 part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or
6 certificate found to have committed a violation or violations of this chapter to pay to the board all
7 reasonable costs of investigation and prosecution of the case, including, but not limited to,
8 attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

9 7. California Code of Regulations, Title 16, section 52, states in pertinent
10 part:

11 "(a) A licensee shall respond to any inquiry by the Board or its appointed
12 representatives within 30 days. The response shall include making available all
13 files, working papers and other documents requested.

14 ""

15 8. California Code of Regulations, Title 16, section 68, states:

16 "A licensee, after demand by or on behalf of a client, for books, records
17 or other data, whether in written or machine sensible form, that are the client's
18 records shall not retain such records. Unpaid fees do not constitute justification
19 for retention of client records.

20 "Although, in general the accountant's working papers are the property
21 of the licensee, if such working papers include records which would ordinarily
22 constitute part of the client's books and records and are not otherwise available to
23 the client, then the information on those working papers must be treated the same
24 as if it were part of the client's books and records."

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FACTS

9. In or about February 2001, Respondent Brian James Brelje ("Respondent") was retained to prepare federal and state individual and fiduciary returns for the late Thomas G. Denton ("Mr. Denton") and The Thomas G. Denton Family Trust ("Trust"). Respondent had provided accountancy services to Mr. Denton for many years prior to this agreement. Mr. Denton passed away on November 22, 2000.

10. The returns to be completed included the following: Federal Form 706 (U.S. Estate and Generation-Skipping Transfer Tax Return; Federal Form 1041 (U.S. Income Tax Return for Estates and Trusts); State of California Form 541 (California Fiduciary Income Tax Returns); and the late Mr. Denton's final individual federal and state income tax returns for 2000. Federal Form 1041 and State Form 541 were to be completed for the fiscal years ending on October 31, 2001, and October 31, 2002.

11. Respondent submitted an invoice dated June 4, 2001, in the amount of \$1,918.80, to Dr. Jefferson K. Davis, Trustee of the Denton Family Trust ("Trustee"), for services rendered from February 15, 2001, through May 17, 2001.

12. The filing due date for Federal Form 706 was extended to February 25, 2002. The filing due dates for the Federal Form 1041 and State Form 541 were February 15, 2002, and February 18, 2003, respectively. The filing due date for the federal and state individual returns was April 16, 2001.

13. Despite numerous conversations with Respondent who continually assured the Trustee that the returns would be completed and filed, they were not. On or about March 28, 2003, almost two years after Respondent was retained, the Trustee sent a letter to Respondent expressing his concerns and frustrations about the unfiled returns. In response, Respondent asked that the Trustee allow him until April 30, 2003, to complete the returns.

14. On or about April 23, 2003, Respondent received a notice from the Internal Revenue Service ("IRS") in behalf of the Trustee indicating that the extended due date for the Form 706 had expired, and the return had not been received.

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1 15. Respondent did not complete the returns by the agreed upon date of
2 April 30, 2003. Respondent instead submitted a written agreement dated May 1, 2003, to
3 complete the federal and state fiduciary returns, listing his hourly rates. The agreement did not
4 make any reference to the Form 706 or federal and state individual tax returns.

5 16. Despite repeated assurances from Respondent that he would complete and
6 file the returns, he failed to do so. On or about May 23, 2005, the Trustee wrote to Respondent
7 indicating that because of Respondent's failure to complete and file the returns, Mr. Denton's
8 estate could not be fully distributed and closed. The Trustee requested that Respondent return all
9 of the records relating to Mr. Denton's estate so another accountant could be retained to complete
10 the returns.

11 17. Respondent failed to respond to the Trustee's May 23, 2005, letter, but
12 instead contacted the attorney for the Trustee and proposed that he be given until October 31,
13 2005, to complete and file the returns. The attorney sent Respondent a letter dated October 17,
14 2005, stating that the Trustee agreed to the October 31, 2005, deadline, but indicated that if the
15 returns were not completed and filed by that date, Respondent was to forward all of the files and
16 records to the Trustee by November 1, 2005.

17 18. Respondent did not complete or file the returns by the October 31, 2005,
18 deadline nor did he return the files and records to the Trustee by November 1, 2005. On
19 November 7, 2005, the attorney for the Trustee wrote a letter to Respondent directing him once
20 again to return the files and records to the Trustee by November 18, 2005, or a complaint would
21 be filed with the Board of Accountancy ("Board").

22 19. Respondent did not respond to the November 7, 2005, letter, nor did he
23 return the files and records to the Trustee by November 18, 2005. On or about November 21,
24 2005, the Trustee filed a formal complaint against Respondent with the Board.

25 20. As a result of the complaint, the Board instituted an investigation, and on
26 December 1, 2005, sent a certified letter to Respondent informing him of the complaint and
27 requesting further information. Although the certified receipt returned to the Board indicated
28 that the letter was received and signed on or about December 2, 2005, Respondent failed to

1 respond to the Board's inquiry. A second letter was sent to Respondent by certified mail on or
2 about January 24, 2006. Respondent did not respond to this letter. The Board was finally able to
3 talk to Respondent by telephone on or about April 24, 2006.

4 FIRST CAUSE FOR DISCIPLINE

5 (Gross Negligence)

6 21. Respondent is subject to disciplinary action under section 5100(c) in that
7 Respondent was grossly negligent when he failed to prepare and file the federal and state estate
8 and trust returns of the Denton Family Trust and the final individual federal and state income tax
9 returns of the late Mr. Denton, as particularly described in paragraphs 13 through 19, above.

10 SECOND CAUSE FOR DISCIPLINE

11 (Repeated Negligent Acts)

12 22. Respondent is subject to disciplinary action under section 5100(c) in that
13 he committed repeated negligent acts in that he did not prepare and file the federal and state
14 estate and trust returns of the Denton Family Trust and the final individual federal and state
15 income tax returns of the late Mr. Denton, failing to meet agreed upon deadlines of April 30,
16 2003, and October 31, 2005. In addition, Respondent failed to meet the federal and state
17 imposed filing deadlines described in paragraph 12, above.

18 THIRD CAUSE FOR DISCIPLINE

19 (Breach of Fiduciary Duty)

20 23. Respondent is subject to disciplinary action under section 5100(i) in that
21 he breached his fiduciary duty when he failed, after agreeing verbally and in writing, to prepare
22 and file the federal estate and trust returns for the Denton Family Trust and final individual
23 federal and state income tax returns of the late Mr. Denton, who was a long time client of
24 Respondent. The circumstances are more particularly described in paragraphs 9 through 19,
25 above.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Unlawful Retention of Client Records)

3 24. Respondent is subject to disciplinary action under section 5037(b) of the
4 Code and California Code of Regulations, Title 16, Section 68, in that he failed to return the
5 Denton Family Trust records and documents after being requested on two occasions by the
6 Trustee and/or his attorney to do so. The circumstances are more particularly described in
7 paragraphs 16 through 19, above.

8 FIFTH CAUSE FOR DISCIPLINE

9 (Failure to Respond to Board Inquiry)

10 25. Respondent is subject to disciplinary action under California Code of
11 Regulations, Title 16, Section 52, in that he failed to respond to correspondence from the Board
12 requesting further information after a formal complaint was filed by the Trustee, as more
13 particularly described in paragraph 20, above.

14 SIXTH CAUSE FOR DISCIPLINE

15 (Willful Violation of Board Regulations)

16 26. Respondent is subject to disciplinary action under section 5100(g) in that
17 he willfully violated the provisions of the California Accountancy Act and Board of Accountancy
18 regulations by failing to prepare and file the federal and state returns for the Denton Family Trust
19 and the final individual returns for the late Mr. Denton, and for his continued failure to return
20 trust and estate records as requested by the Trustee and his attorney. The circumstances are more
21 particularly described in paragraphs 9 through 19, above.

22 DISCIPLINARY CONSIDERATIONS

23 27. To determine the degree of discipline, if any, to be imposed on
24 Respondent, Complainant alleges that on or about May 18, 1992, in a prior disciplinary action
25 entitled In the Matter of the Accusation against Brian Brelje before the Board of Accountancy, in
26 Case Number AC-92-16, Respondent's license was revoked, but the revocation stayed and the
27 license was placed on probation for three years for gross negligence and for failure to timely
28 return tax records. The circumstances of that case are as follows: Respondent failed to timely

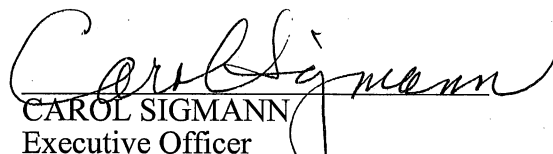
1 complete the 1986 and 1987 tax returns of two clients resulting in substantial late filing penalties.
2 Respondent also failed to timely return the tax records belonging to the clients. That decision is
3 now final and is incorporated by reference as if fully set forth.

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein
6 alleged, and that following the hearing, the Board of Accountancy issue a decision:

- 7 1. Revoking or suspending or otherwise imposing discipline upon Certified
8 Public Accountant Certificate Number 27696, issued to BRIAN JAMES BRELJE;
9 2. Ordering Brian Brelje to pay the Board of Accountancy the reasonable
10 costs of the investigation and enforcement of this case, pursuant to Business and Professions
11 Code section 5107; and
12 3. Taking such other and further action as deemed necessary and proper.

13 DATED: July 13, 2006

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15 
16 CAROL SIGMANN
17 Executive Officer
18 Board of Accountancy
19 State of California
20 Complainant

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22 SD2006801066
23 Rev. 7/6/06
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